

§ 6-1469. Practice standards for guardians ad litem for proceedings under the Nebraska Probate Code.

(A) Purpose and Definitions.

(1) The purpose of these practice standards is to ensure that the best interests of persons under disability or alleged disability who come before the court in proceedings under the Nebraska Probate Code are effectively represented by their court-appointed guardian ad litem. The appointment of a guardian ad litem under these proceedings does not remove the right to separate legal counsel as provided in the Nebraska Probate Code.

(2) Where the word "person" is used in these standards, the term shall include the following: allegedly incapacitated person, incapacitated person, ward, protected person, minor, or any other person for whom a guardian ad litem may be appointed under the Nebraska Probate Code.

(B) Appointment.

(1) Under Neb. Rev. Stat. § 30-4202, only a lawyer duly licensed by the Nebraska Supreme Court may be appointed to serve as a guardian ad litem in proceedings under the Nebraska Probate Code.

(2) When feasible, the duties of a guardian ad litem should be personal to the appointed lawyer and should not normally be delegated to another lawyer.

(3) Prior to appointment as guardian ad litem, the lawyer shall fulfill the training requirements as set forth in section (G) of these standards.

(4) A guardian ad litem appointed pursuant to the Nebraska Probate Code may act as his or her own lawyer, and as a lawyer for the person who is the subject of the proceeding unless such person obtains his or her own lawyer, or requests separate counsel be appointed.

(C) Role of Guardian Ad Litem.

(1) Under Neb. Rev. Stat. § 30-4203(2), a guardian ad litem may perform those duties normally performed by a lawyer, including:

(a) Conducting discovery, presenting witnesses, cross-examining witnesses, presenting evidence, filing motions, and appealing any decisions regarding the person for whom he or she has been appointed;

(b) Entering into stipulations and agreements concerning such person deemed by the guardian ad litem to be in such person's best interests.

(2) Where a lawyer has already been or is appointed to represent the legal interests of the person, or where such person has hired or does hire his or her own lawyer, the guardian ad

litem shall function only to advocate for the best interests of the person.

(3) Accordingly, the following shall apply:

(a) In serving as advocate for the person's best interests, the guardian ad litem shall make an independent determination by considering all available information and resources. Such determination is not required to be consistent with any preferences expressed by the person.

(b) Upon making such determination, the guardian ad litem shall make such recommendations to the court and shall take the necessary actions to advocate and protect the best interests of the person.

(c) Where the person expresses a preference which is inconsistent with the guardian ad litem's determination of best interests, the guardian ad litem shall immediately inform the court that a conflict of interest is present and request the court make a determination whether special reasons exist for the court to appoint separate legal counsel to represent the person's legal interests in the proceeding. The guardian ad litem may also request counsel, and the court may appoint counsel for the guardian ad litem pursuant to § 30-4202.

(d) If the court exercises its statutory authority to appoint separate legal counsel, such counsel shall represent the person's legal interests. The guardian ad litem shall continue to advocate the person's best interests and defend the person's social, economic, and safety interests in compliance with Neb. Rev. Stat. § 30-4203(1)(b) and (f).

(D) Authority of Guardian Ad Litem.

(1) A guardian ad litem shall have access to all information as provided by Neb. Rev. Stat. §§ 30-4203 and 30-4204, and any other information by order of the court.

(2) A guardian ad litem shall have access to the person for whom the guardian ad litem has been appointed, including announced or unannounced visits to the person at his or her home or at any location at which such person may be present.

(3) Pursuant to Neb. Rev. Stat. § 30-4208, a guardian ad litem shall not have indirect or direct physical control over a person for whom the guardian ad litem has been appointed, nor shall a guardian ad litem have indirect or direct control over the property or affairs of a person for whom the guardian ad litem has been appointed.

(4) The court should facilitate the guardian ad litem's authority to obtain information and access to the person by court order.

(E) Duties of Guardian Ad Litem.

(1) The guardian ad litem shall fulfill all duties outlined by Neb. Rev. Stat. §§ 30-4203(1) and 30-4206(1) and any other duties as directed by court order.

(2) Consultation with the person.

(a) The guardian ad litem should further consult with the person for whom he or she was appointed when reasonably possible and at those times and intervals as required by the Nebraska Probate Code.

(b) Where an unreasonable geographical distance is involved between the location of the

person and the guardian ad litem, the guardian ad litem should explore the possibility of obtaining from the court an advance determination that the court will arrange for the payment or reimbursement of the guardian ad litem's reasonable expenses incurred in connection with the travel to meet with the person.

(3) Reports and recommendations to the court.

(a) The guardian ad litem shall submit a written report to the court as required by Neb. Rev. Stat. § 30-4205 or otherwise ordered by the court. The report shall be provided to the court at least one (1) week prior to the hearing. A copy of the report shall be provided to all interested persons.

(b) To assist the guardian ad litem in preparing the written report, the guardian ad litem shall use the "Report of Guardian Ad Litem" forms found on the Nebraska Supreme Court website. See Appendices 14 and 15.

(4) Participation in court proceedings.

(a) The guardian ad litem shall attend all hearings unless expressly excused by the court.

(b) The guardian ad litem may testify only to the extent allowed by the Nebraska Rules of Professional Conduct.

(c) Where the guardian ad litem is unable or unavailable to attend a hearing due to reasons such as personal illness, emergency, involvement in another court hearing, or absence from the jurisdiction, such guardian ad litem may make proper arrangements for another attorney to attend the hearing as long as no other party objects and as long as the hearing is not anticipated to be a contested evidentiary hearing. In such a situation, the guardian ad litem does not need to be excused from attendance at the hearing.

(5) Duty to provide quality representation.

(a) Any attorney appointed by the court to serve as a guardian ad litem is expected to provide quality representation and advocacy for the person throughout the entirety of the case.

(b) Attorneys should not accept caseloads or appointments to serve as a guardian ad litem or to provide guardian ad litem services that are likely to, in the best professional judgment of the appointed attorney, lead to the provision of representation or service that is ineffective to protect and further the interests of the person, or likely to lead to the breach of professional obligations of the guardian ad litem.

(F) Duration of Appointment.

Under Neb. Rev. Stat. § 30-4209, the authority of the guardian ad litem shall commence upon appointment by the court and shall continue in that case until such time as the court allows the guardian ad litem to withdraw, terminates the appointment of the guardian ad litem, removes or suspends the guardian ad litem, or appoints the guardian ad litem to serve in another capacity.

(G) Education Requirements.

To be considered a candidate for appointment as a guardian ad litem in a probate

proceeding, an attorney shall have completed 6 hours of specialized training provided online by the Administrative Office of the Courts Judicial Branch Education Division prior to an initial appointment. Thereafter, in order to maintain eligibility to be appointed and to serve as a guardian ad litem, an attorney shall complete 1 hour of specialized training per year as provided by the Administrative Office of the Courts Judicial Branch Education Division. Courts shall appoint attorneys trained under these standards in all cases when available; provided, however, that if the judge determines that an attorney with the training required herein is unavailable within the area, he or she may appoint an attorney without such training and the attorney must agree to complete the 6-hour online training within 7 days of the appointment.

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